



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201425021

MAR 25 2014

Uniform Issue List: 408.03-00

T! EP: RA: T3

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Legend:

Taxpayer A = \*\*\*

IRA X = \*\*\*

Amount A = \*\*\*

Partnership P = \*\*\*

Financial Institution Y = \*\*\*

Financial Institution Z = \*\*\*

Individual M = \*\*\*

Dear \*\*\*:

This is in response to your request dated August 14, 2013, as supplemented by correspondence dated September 27, 2013, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) of the Code was due to financial institution error. Taxpayer A further represents that Amount A has not been used for any other purpose.

In January 2012, Taxpayer A decided to invest a portion of IRA X in a private equity partnership, Partnership P. He discussed this transaction with a representative of Partnership P, Individual M, and was assured that the investment could be accomplished through his IRA.

After Taxpayer A's discussion with Individual M, he informed Financial Institution Y, where IRA X was held, that he intended to invest his IRA in a private equity partnership. On January 20, 2012, Financial Institution Y processed the transfer of Amount A to Financial Institution Z to be credited to Partnership P as a trustee to trustee transfer.

Although Partnership P and Financial Institution Z accepted the transfer of Amount A as a trustee to trustee transfer and recorded the owner of the investment as Taxpayer A's IRA, neither company advised Taxpayer A about establishing a new IRA at Financial Institution Z to hold Amount A.

Taxpayer A was unaware of the problem because his monthly statement from Partnership P indicated that the investment was held in the name of his IRA. Individual M represents that it was always the understanding of Partnership P that Taxpayer A intended to have Amount A invested in a proper IRA.

Taxpayer A asserts that the failure to accomplish the rollover within the required 60-day rollover period was due to the fact that although Partnership P and Financial Institution Z were fully aware that he intended to make the investment in an IRA, Taxpayer A was provided with incorrect advice and improper paperwork in establishing a proper IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) of the Code and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the

improper advice and incorrect paperwork he received from Partnership P and Financial Institution Z with regards to the requirements of establishing an IRA to hold Amount A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.


This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\* (ID# \*\*\*) at (\*\*\*) \*\*\*-\*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: \*\*\*